



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

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Date Mailed: September 24, 2018
MAHS Docket No.: 18-007879
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION FOR
INTENTIONAL PROGRAM VIOLATION**

Upon the request for a hearing by the Michigan Department of Health and Human Services (MDHHS), this matter is before the undersigned administrative law judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was scheduled for September 20, 2018, from Detroit, Michigan. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled hearing time. The Michigan Department of Health and Human Services (MDHHS) was represented by Adriana Laugavitz, regulation agent with the Office of Inspector General. Respondent did not appear for the hearing.

ISSUE

The issue is whether MDHHS established by clear and convincing evidence that Respondent committed an intentional program violation (IPV) which justifies imposing a disqualification against Respondent.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On August 12, 2014, Respondent submitted to MDHHS an electronic application for Food Assistance Program (FAP) and Family Independence Program (FIP) benefits. Respondent reported no employment income. Boilerplate language stated that Respondent's signature was certification that all reported information was true. (Exhibit A, pp. 9-44)

2. On October 29, 2014, MDHHS received a Redetermination from Respondent. Respondent checked having no household employment income. (Exhibit A, pp. 46-50)
3. On July 11, 2017, MDHHS received an email from Respondent's former employer listing pay dates and amounts from Respondent's time of employment. Biweekly pay dates from August 8, 2014, through February 20, 2015, were listed. (Exhibit A, pp. 51-52)
4. On July 12, 2017, MDHHS determined that Respondent received an overissuance of \$[REDACTED] in FIP benefits from September 2014 through December 2014. MDHHS also determined that Respondent received an OI of \$[REDACTED] in FAP benefits from August 2014 through February 2015. Both OIs were based on unreported employment income. (Exhibit A, pp. 55-77)
5. On July 24, 2018, MDHHS requested a hearing to establish that Respondent committed an IPV justifying imposing a one-year disqualification period due to unreported income. (Exhibit A, p. 1)

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. MDHHS (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

MDHHS' Hearing Summary and testimony alleged that Respondent committed an IPV by failing to report employment income which resulted in an OI of FAP benefits. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 4-5), sent to Respondent as part of MDHHS' prehearing procedures.

An IPV is a benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representative. Bridges Program Glossary (October 2015), p. 36. A suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and

- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities. BAM 720 (January 2016), p. 1.¹

IPV is suspected when there is **clear and convincing** evidence that the client or CDC provider has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. *Id.* Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2016), p. 11. Changes must be reported within 10 days of receiving the first payment reflecting the change. *Id.*

MDHHS presented budgets indicating that Respondent received overissuances of \$[REDACTED] in FIP benefits from September 2014 through December 2014 and \$[REDACTED] in FAP benefits from August 2014 through February 2015. Unrebutted MDHHS testimony credibly indicated that the OIs were caused by Respondent's failure to timely report income and that the OIs were already established. For an IPV to be established, MDHHS must also clearly and convincingly establish that Respondent intentionally failed to report and/or misreport income.

MDHHS presented an email from Respondent's alleged former employer listing pay dates for Respondent from August 8, 2014, through February 20, 2015. MDHHS also presented an application and Redetermination completed by Respondent during her time of employment; both documents reported no employment income. Boilerplate language on MDHHS reporting documents states that the client's signature is certification, subject to perjury, that all reported information on the document was true. The language is consistent with MDHHS policy which states that clients must completely and truthfully answer all questions on forms and in interviews (see BAM 105 (October 2016), p. 8). The evidence was not indicative that Respondent did not or could not understand the clear and correct reporting requirements.

The evidence established that Respondent misreported, in writing, having no employment income during a time of employment. Respondent's misreporting directly led to an OI of benefits. Generally, a client's written statement which contradicts known facts resulting in an OI is clear and convincing evidence of an intent to commit an IPV; evidence was not presented to rebut the generality.

¹ See 7 CFR 253.8 for the corresponding federal regulations.

It is found MDHHS clearly and convincingly established that Respondent committed an IPV. Accordingly, MDHHS may proceed with disqualifying Respondent from benefit eligibility.

The standard disqualification period is used in all instances except when a court orders a different period. MDHHS is to apply the following disqualification periods to recipients determined to have committed an IPV: one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 725 (January 2016), p. 16.²

MDHHS did not allege that Respondent previously committed an IPV. Thus, a one-year disqualification period is justified.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent committed an IPV based on receipt of over-issued FAP and FIP benefits. The MDHHS request to establish corresponding one-year disqualification periods against Respondent is **APPROVED**.

CG/



Christian Gardocki

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

² See 7 CFR 253.8 (b) for the corresponding federal regulations.

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Lindsay Miller
MDHHS-Genesee-UnionSt-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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M Shumaker
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MAHS